

**STATE OF TENNESSEE**

OFFICE OF THE  
**ATTORNEY GENERAL**  
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November 10, 2004

Opinion No. 04-163

Application of Campbell County Hotel-Motel Tax to Rental of Houseboats on Norris Lake

**QUESTIONS**

1. Are rentals of houseboats on Norris Lake subject to the Campbell County Hotel-Motel Tax, as authorized by Chap. No. 102, 2004 Private Acts?
2. If so, may the Campbell County Commission exempt houseboats or other types of lodging from the tax?
3. May different tax rates be applied to different types of accommodations subject to the tax?

**OPINIONS**

1. Yes. Persons renting houseboats on Norris Lake are exercising the privilege of occupying accommodations in Campbell County and are thus subject to the hotel-motel tax.
2. No. Since houseboats come within the statutory definition of "hotel," the county commission, if it decides to impose the tax, must apply it to all accommodations that are hotels within the meaning of the Act.
3. No. While the county commission may set the rate of the tax at any amount up to 5%, it must apply that rate to all accommodations that have been defined by the Act as "hotels."

**ANALYSIS**

(1)

The General Assembly, through Chapter No. 102, 2004 Private Acts, has authorized the Campbell County Commission to levy a hotel-motel tax within the county. The Act describes the tax as "a privilege tax upon the privilege of occupancy in any hotel of each transient, in an amount not to exceed five percent (5%) of the rate charged by the operator. The incidence of the

tax is “upon the transient occupying such room or other accommodation . . . .” *See Admiralty Suites and Inns, LLC v. Shelby County Tennessee*, 138 S.W.3d 233, 239 (Tenn. Ct. App. 2003). The instant question is whether this tax applies to individuals who rent, for less than thirty days, houseboats on Norris Lake within Campbell County. Some of these houseboats are stationary, apparently anchored permanently on the shore of the lake. Others can be maneuvered around the lake. All have accommodations for sleeping. The *Merriam-Webster Collegiate Dictionary*, 10<sup>th</sup> edition, defines a houseboat as “[a] boat fitted for use as a dwelling; a pleasure craft with a broad beam, a usually shallow draft, and a large superstructure resembling a house.”

The tax is premised on the exercise of the privilege of occupancy of “any rooms, lodgings or accommodations in any hotel.” Thus, the application of the tax principally turns on the Act’s broad definition of “hotel” in section 1(d):

“Hotel” means any structure or space, or any portion thereof, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist camp, tourist court, tourist cabin, campground, motel, or any place in which rooms, lodgings or accommodations are furnished to transients for a consideration.

It is the opinion of this Office that houseboats come within this definition. Houseboats are movable structures and contain space intended and designed for lodging and sleeping. In the instant situation, they provide overnight accommodations for transients for a consideration. Of course they are also vehicles, unless they are permanently anchored at the shoreline. But a principal purpose of a houseboat is to provide accommodations and sleeping quarters, which falls squarely within the scope of the Campbell County Act. The temporary rental of a houseboat is analogous to a transient’s rental of a tourist cabin or campground space. This is particularly apparent as to houseboats that, while floating, are stationary. That some of the houseboats can maneuver around the lake is not sufficient to justify treating them as merely vehicles, since providing accommodations and sleeping quarters remains a “crucial element” of what they offer. *See Thomas Nelson, Inc. v. Olsen*, 723 S.W.2d 621, 622-24 (Tenn. 1987). Houseboats are not, in this respect, similar to the gondolas and chair lift system at the Knoxville World’s Fair that the Supreme Court addressed in *Sky Transpo, Inc. v. City of Knoxville*, 703 S.W.2d 126 (Tenn. 1985). There the Court found that the chair lift was primarily for transportation rather than amusement. Houseboats, however, are intended as much for accommodations as for transportation. That some of them are also vehicles does not alter their function in providing accommodations and sleeping quarters at the lake, just as do the tourist cabins and campgrounds expressly mentioned in the hotel-motel tax act.

Therefore, houseboats do fit the definition of “hotel” in the Act, and the rental of lodging in them to transients is subject to the tax authorized for Campbell County.

Having determined that houseboats are subject to the tax, the next question is whether the county commission may exempt them or any other specific type of lodging from the tax. The Act says that the tax, once ratified and levied by the county commission, is “upon the privilege of occupancy in *any* hotel of each transient.” Section 2 (emphasis added). Section 3 of the Act mandates that the tax be added “by *each* operator to *each* invoice prepared by the operator for the occupancy of the hotel.” (emphasis added). Section 5 declares that the tax “shall be remitted by *all* operators who lease, rent or charge *for any rooms or spaces in hotels within the county . . .*” (emphasis added). This wording does not indicate that the county commission may differentiate among various types of accommodations. If a lodging or space falls within the Act’s broad definition of hotel, then the tax, once implemented, applies to it. The Act does not give the county commission any leeway to relieve from the burden of the tax the rental of space in a particular type of “hotel.”

(3)

Similarly, the final question is whether different tax rates may be applied to different structures or spaces that meet the definition of “hotel” in the Act. As noted above, the Act vests in the county commission the power to levy the tax “upon the privilege of occupancy in any hotel of each transient, in an amount not to exceed five percent (5%) of the rate charged by the operator.” It further provides, “The rate of the tax may be modified by the county legislative body subject to the five percent (5%) limitation.” Thus, it is clear that the commission may set any lesser rate for the tax. But, again, the Act does not contemplate different rates for different types of hotels. The tax is to be levied “upon the privilege of occupancy in *any* hotel of *each* transient, in *an amount* not to exceed five percent . . .” The Act refers not to different amounts but to “an” amount for “any” hotel. The General Assembly has carefully structured this tax, and the county commission has only the powers expressly conferred in the Act. That includes setting the tax rate, not to exceed five percent. But the Act appears to contemplate only one such rate. Therefore, it is the opinion of this Office that the county commission must apply one uniform rate to all “hotels” within the county, including houseboats.

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